

Dismissal with leave to amend

1 immune from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must, however, be  
2 liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.  
3 1988).

4 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential  
5 elements: (1) that a right secured by the Constitution or laws of the United States was  
6 violated, and (2) that the alleged violation was committed by a person acting under the  
7 color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

8 **B. Plaintiff's Claims**

9 Plaintiff claims that SQSP mailroom supervisor Alex Lile has violated his right of  
10 access to the courts by repeatedly sending back Plaintiff's legal mail unprocessed.  
11 (Docket No. 6 at 4.) He alleges that it has hindered his efforts to pursue Case No.  
12 CV1400857, regarding lost property, in Marin County Superior Court. He also alleges  
13 that on February 4, 2015, the mail room returned the case management status that he was  
14 required to serve on the Attorney General in Case No. 1401048, also pending in Marin  
15 County Superior Court.

16 Prisoners have a constitutional right of access to the courts. See Lewis v. Casey,  
17 518 U.S. 343, 350 (1996); Bounds v. Smith, 430 U.S. 817, 821 (1977). To establish a  
18 claim for any violation of the right of access to the courts, the prisoner must prove that  
19 there was an inadequacy in the prison's legal access program that caused him an actual  
20 injury. See Lewis, 518 U.S. at 350-55. To prove an actual injury, the prisoner must show  
21 that the inadequacy in the prison's program hindered his efforts to pursue a non-frivolous  
22 claim concerning his conviction or conditions of confinement. See id. at 354-55.

23 Plaintiff's original complaint was dismissed for failure to allege an actual injury.  
24 Plaintiff's amended complaint has not corrected this deficiency.

25 There are no claims against office assistant Jerry White, so he is DISMISSED  
26 from this action.

27 Plaintiff's claims regarding Defendant Lile are, for the most part, conclusory.  
28 Plaintiff provides no details as to how his prosecution of either Marin County Superior

1 Court cases was hindered by his mail being unprocessed. It is unclear if the failure to  
2 serve his case management statement resulted in adverse action against him or otherwise  
3 hindered his efforts to pursue relief in Case No. 1401048. If Plaintiff's court documents  
4 are being filed or served after court-ordered deadlines, that does not, without an adverse  
5 effect, constitute actual injury. In other cases, courts have found actual injury where the  
6 prisoners have had their cases dismissed with prejudice, or the prisoners have been unable  
7 to file legal actions. Lewis, 518 U.S. at 356. This is not the case here.

8 Plaintiff's allegations are insufficient to state a claim of a denial of access to courts  
9 because he has again failed to allege an actual injury. However the Court will allow  
10 Plaintiff another change to amend his complaint to show actual injury, if he can truthfully  
11 do so.

12 The complaint is DISMISSED WITH LEAVE TO AMEND for Plaintiff to  
13 attempt to show that defendant Lile's failure to process his mail hindered his efforts to  
14 pursue a non-frivolous claim concerning his conviction or conditions of confinement.  
15 See Lewis, 518 U.S. at 354-55. Plaintiff should again include the case number, the court  
16 where the matter is being adjudicated, and the description of the claim.

### 17 CONCLUSION

18 For the foregoing reasons, the Court orders as follows:

- 19 1. Defendant Jerry White is DISMISSED from this action.
- 20 2. The complaint is DISMISSED with leave to amend. Within **twenty-eight**  
21 **(28) days** of the date this order is filed, Plaintiff shall file an amended complaint using the  
22 court's form complaint. The amended complaint must include the caption and civil case  
23 number used in this order, i.e., Case No. C 14-04648 EJD (PR), and the words "SECOND  
24 AMENDED COMPLAINT" on the first page. Plaintiff must answer all the questions on  
25 the form in order for the action to proceed.

26 **Failure to respond in accordance with this order by filing an amended**  
27 **complaint will result in the dismissal of this action without prejudice and without**  
28 **further notice to Plaintiff.**

1 The Clerk shall include two copies of the court's complaint with a copy of this  
2 order to Plaintiff.

3  
4 DATED: 4/14/2015

  
EDWARD J. DAVILA  
United States District Judge

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JERRY SMITH,  
Plaintiff,

v.

JERRY WHITE, et al.,  
Defendants.

Case No. [5:14-cv-04648-EJD](#)

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 4/14/2015, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Jerry Smith ID: H44485  
San Quentin State Prison  
San Quentin, CA 94974

Dated: 4/14/2015

Richard W. Wieking  
Clerk, United States District Court

By: Elizabeth C. Garcia  
Elizabeth Garcia, Deputy Clerk to the  
Honorable EDWARD J. DAVILA

United States District Court  
Northern District of California